

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 21, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GREGORY C.,

Plaintiff,

v.

KILOLO KIJAKAZI,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 4:21-CV-05026-JAG

ORDER GRANTING
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 14, 16. Attorney Maren Miller Bam represents Gregory C. (Plaintiff); Special Assistant United States Attorney Franco Becia represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 5. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

I. JURISDICTION

Plaintiff filed an application for Disability Insurance Benefits on July 19, 2019, alleging disability since October 1, 2016, due to PTSD, ankle pain, shoulder pain, back pain, tinnitus/hearing loss, and left hand injury. Tr. 67-68. The application was denied initially and upon reconsideration. Tr. 96-102, 104-10.

1 Administrative Law Judge (ALJ) Marie Palachuk held a hearing on July 15, 2020,
2 Tr. 35-66, and issued an unfavorable decision on July 31, 2020, Tr. 15-27. Plaintiff
3 requested review from the Appeals Council and the Appeals Council denied the
4 request for review on January 27, 2021. Tr. 1-5. The ALJ's July 2020 decision
5 became the final decision of the Commissioner, which is appealable to the district
6 court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review
7 on February 23, 2021. ECF No. 1.

8 **II. STATEMENT OF FACTS**

9 The facts of the case are set forth in detail in the transcript of proceedings
10 and only briefly summarized here. Plaintiff was born in 1981 and was 35 years old
11 as of the alleged onset date. Tr. 25. He has a high school education and served in
12 the U.S. Navy for eight years. Tr. 283. He has alleged PTSD from his time in the
13 service, including from witnessing a fellow serviceman's accidental death in
14 Guam. Tr. 283-84. In late 2019 he returned to work full time, but testified that he
15 used all his paid time off for the year in the first few months of 2020, and had to
16 work with his human resources department to make arrangements going forward.
17 Tr. 54.

18 **III. STANDARD OF REVIEW**

19 The ALJ is responsible for determining credibility, resolving conflicts in
20 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
21 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
22 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
23 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
24 only if it is not supported by substantial evidence or if it is based on legal error.
25 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
26 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
27 1098. Put another way, substantial evidence is such relevant evidence as a
28 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*

1 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one
 2 rational interpretation, the Court may not substitute its judgment for that of the
 3 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,
 4 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the
 5 administrative findings, or if conflicting evidence supports a finding of either
 6 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*
 7 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision
 8 supported by substantial evidence will be set aside if the proper legal standards
 9 were not applied in weighing the evidence and making the decision. *Browner v.*
 10 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

11 **IV. SEQUENTIAL EVALUATION PROCESS**

12 The Commissioner has established a five-step sequential evaluation process
 13 for determining whether a person is disabled. 20 C.F.R. § 404.1520(a); *Bowen v.*
 14 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four the claimant
 15 bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d
 16 at 1098-1099. This burden is met once a claimant establishes that a physical or
 17 mental impairment prevents the claimant from engaging in past relevant work. 20
 18 C.F.R. § 404.1520(a)(4). If a claimant cannot perform past relevant work, the ALJ
 19 proceeds to step five, and the burden shifts to the Commissioner to show (1) the
 20 claimant can make an adjustment to other work; and (2) the claimant can perform
 21 specific jobs that exist in the national economy. *Batson v. Comm'r of Soc. Sec.*
 22 *Admin.*, 359 F.3d 1190, 1193-94 (9th Cir. 2004). If a claimant cannot make an
 23 adjustment to other work in the national economy, the claimant will be found
 24 disabled. 20 C.F.R. § 404.1520(a)(4)(v).

25 **V. ADMINISTRATIVE FINDINGS**

26 On July 31, 2020, the ALJ issued a decision finding Plaintiff was not
 27 disabled as defined in the Social Security Act.
 28

1 At **step one**, the ALJ found Plaintiff had engaged in substantial gainful
2 activity from October 28, 2019, through the date of the decision, and therefore
3 denied the claim at step one for that period of time. Tr. 17-18. However, as there
4 was a continuous 12-month period during which Plaintiff did not engage in
5 substantial gainful activity, the ALJ continued the five-step analysis for the earlier
6 period. Tr. 18.

7 At **step two**, the ALJ determined Plaintiff had the following severe
8 impairments: obesity, chronic low back pain, PTSD, major depressive disorder,
9 and alcohol and marijuana abuse. *Id.*

10 At **step three**, the ALJ found Plaintiff did not have an impairment or
11 combination of impairments that met or medically equaled the severity of one of
12 the listed impairments. Tr. 19-20.

13 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
14 he could perform work at the light exertional level, except:

15 He can occasionally perform postural activities with the
16 exception of no crawling or climbing of ladders, ropes or
17 scaffolds; able to understand, remember and carryout simple,
18 routine tasks; able to maintain concentration, persistence and
19 pace on simple, routine tasks for two-hour intervals between
20 regularly scheduled breaks; no fast-paced production rate of
21 pace; no public contact; occasional interacting with coworkers
22 and supervisors; dealing with things rather than people.

23 Tr. 20.

24 At **step four**, the ALJ found Plaintiff was unable to perform his past relevant
25 work as a phlebotomist, carpenter, bus driver, or operating engineer. Tr. 24.

26 At **step five**, the ALJ determined that, based on the testimony of the
27 vocational expert, and considering Plaintiff's age, education, work experience, and
28 RFC, Plaintiff was capable of performing jobs that existed in significant numbers

1 in the national economy, including the jobs of collator operator, small parts
2 assembler, and office cleaner. Tr. 26.

3 The ALJ thus concluded Plaintiff was not under a disability within the
4 meaning of the Social Security Act at any time from the alleged onset date through
5 the date of the decision. 26-27.

6 VI. ISSUES

7 The question presented is whether substantial evidence supports the ALJ's
8 decision denying benefits and, if so, whether that decision is based on proper legal
9 standards.

10 Plaintiff contends the ALJ erred by (1) improperly weighing the opinion
11 from Dr. Valdez; and (2) failing to properly evaluate Plaintiff's subjective
12 complaints.

13 VII. DISCUSSION

14 A. Plaintiff's Symptom Testimony.

15 Plaintiff alleges the ALJ erred in rejecting his symptom testimony without
16 providing adequate reasons. ECF No. 14 at 17-20.

17 It is the province of the ALJ to make determinations regarding a claimant's
18 subjective statements. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).
19 However, the ALJ's findings must be supported by specific cogent reasons.
20 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative
21 evidence of malingering, the ALJ's reasons for rejecting a claimant's testimony
22 must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281
23 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General
24 findings are insufficient: rather the ALJ must identify what testimony is not
25 credible and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d
26 at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

27 The ALJ found Plaintiff's medically determinable impairments could
28 reasonably be expected to cause the alleged symptoms; however, she found

1 Plaintiff's statements concerning the intensity, persistence and limiting effects of
2 his symptoms were not entirely consistent with the medical evidence and other
3 evidence in the record. Tr. 21. The ALJ found Plaintiff's allegations were not
4 supported by the objective physical and mental evidence, were inconsistent with
5 his demonstrated activities (including his return to full-time work), were
6 undermined by his statements to providers in which he regularly denied symptoms,
7 and were inconsistent with his conservative course of treatment. Tr. 21-23.

8 Plaintiff argues the ALJ disregarded supportive objective findings, and
9 ignored the context of Plaintiff's work, including his need for extensive time off.
10 ECF No. 14 at 18-19. He additionally asserts the ALJ failed to discuss the
11 circumstances surrounding his treatment, including that past medication use had
12 not been beneficial and that he sought emergent treatment for anxiety. *Id.*
13 Defendant argues the ALJ gave sufficient reasons for disregarding Plaintiff's
14 statements, and that her interpretation of the record was supported by substantial
15 evidence. ECF No. 16 at 9-15.

16 The Court finds the ALJ offered sufficient reasons for discounting Plaintiff's
17 subjective reports. An ALJ may consider inconsistent statements by a claimant in
18 assessing the reliability of his reports. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148
19 (9th Cir. 2001). The ALJ reasonably pointed to instances in the record where
20 Plaintiff denied symptoms that he later reported in his statements to the Agency.
21 Tr. 23. The ALJ's interpretation is supported by substantial evidence, and Plaintiff
22 offers no arguments contrary to the ALJ's conclusions.

23 A claimant's daily activities may support an adverse credibility finding if the
24 claimant's activities contradict his other testimony. *Orn v. Astrue*, 495 F.3d 625,
25 639 (9th Cir. 2007). The ALJ reasonably found Plaintiff's engagement in full-time
26 work to be contrary to his claim for disability, and accurately noted that there was
27 no significant change in his overall condition since the alleged onset date. Tr. 23.
28 Plaintiff asserts his work activity should not be construed as inconsistent with his

1 reports, as he used all of his time off in the first few months of the year and was
2 working with his HR department to get accommodations and discussed FMLA
3 leave with his therapist. ECF No. 14 at 19. However, the record contains no
4 documentation of any FMLA paperwork or any records from Plaintiff's employer
5 to support these allegations. The only record supporting this allegation is Dr.
6 Valdez's note from January 2020 which states only "FMLA" with no further
7 explanation. Tr. 744. The ALJ's conclusion that Plaintiff's full-time work activity
8 since October 2019 is inconsistent with his claim to disability is supported by
9 substantial evidence.

10 Although it cannot serve as the sole ground for rejecting a claimant's
11 symptom statements, objective medical evidence is a "relevant factor in
12 determining the severity of the claimant's pain and its disabling effects." *Rollins v.*
13 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The ALJ found Plaintiff's
14 allegations to be inconsistent with the consistently unremarkable physical exam
15 findings, the lack of supportive imaging of Plaintiff's spine, and the no more than
16 moderate abnormalities noted on mental status exams. Tr. 21-22. The Court finds
17 the ALJ's interpretation of the record is reasonable. While there are some objective
18 findings in Plaintiff's treatment records that are supportive of his allegations,
19 "when the evidence is susceptible to more than one rational interpretation, we must
20 uphold the ALJ's findings if they are supported by inferences reasonably drawn
21 from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). The ALJ
22 reasonably summarized the records, pointing to the largely unremarkable findings
23 throughout the record and the lack of support for marked or more severe
24 limitations.

25 The Court finds the ALJ offered clear and convincing reasons for
26 discounting Plaintiff's subjective complaints.

1 **B. Dr. Roberto Valdez.**

2 Plaintiff contends the ALJ erred by improperly rejecting the opinion from
3 his treating therapist, Dr. Valdez. ECF No. 14 at 8-16.

4 For claims filed on or after March 27, 2017, new regulations apply that
5 change the framework for how an ALJ must weigh medical opinion evidence.
6 *Revisions to Rules Regarding the Evaluation of Medical Evidence*, 2017 WL
7 168819, 82 Fed. Reg. 5844 (Jan. 18, 2017); 20 C.F.R. § 404.1520c. The new
8 regulations provide the ALJ will no longer give any specific evidentiary weight to
9 medical opinions or prior administrative medical findings, including those from
10 treating medical sources. 20 C.F.R. § 404.1520c(a). Instead, the ALJ will consider
11 the persuasiveness of each medical opinion and prior administrative medical
12 finding, regardless of whether the medical source is an Acceptable Medical Source.
13 20 C.F.R. § 404.1520c(c). The ALJ is required to consider multiple factors,
14 including supportability, consistency, the source's relationship with the claimant,
15 any specialization of the source, and other factors (such as the source's familiarity
16 with other evidence in the file or an understanding of Social Security's disability
17 program). *Id.* The regulations make clear that the supportability and consistency of
18 the opinion are the most important factors, and the ALJ must articulate how they
19 considered those factors in determining the persuasiveness of each medical opinion
20 or prior administrative medical finding. 20 C.F.R. § 404.1520c(b). The ALJ may
21 explain how they considered the other factors, but is not required to do so, except
22 in cases where two or more opinions are equally well-supported and consistent
23 with the record. *Id.*

24 Supportability and consistency are further explained in the regulations:

25 (1) *Supportability*. The more relevant the objective medical
26 evidence and supporting explanations presented by a medical
27 source are to support his or her medical opinion(s) or prior
28 administrative medical finding(s), the more persuasive the

1 medical opinions or prior administrative medical finding(s) will
2 be.

3 (2) *Consistency*. The more consistent a medical opinion(s) or
4 prior administrative medical finding(s) is with the evidence from
5 other medical sources and nonmedical sources in the claim, the
6 more persuasive the medical opinion(s) or prior administrative
7 medical finding(s) will be.

8 20 C.F.R. § 404.1520c(c). The Ninth Circuit has additionally held that the new
9 regulatory framework displaces the longstanding case law requiring an ALJ to
10 provide “specific and legitimate” or “clear and convincing” reasons for rejecting a
11 treating or examining doctor’s opinion. *Woods v. Kijakazi*, 32 F.4th 785 (9th Cir.
12 2022).

13 Plaintiff’s treating therapist, Dr. Valdez, completed a medical source
14 statement in January 2020 in which he opined Plaintiff had numerous moderate
15 limitations in work-related functions, and was markedly limited in carrying out
16 detailed instructions, maintaining attention and concentration for extended periods,
17 performing activities within a schedule, maintaining regular attendance, being
18 punctual within customary tolerances, sustaining an ordinary routine without
19 special supervision, completing a normal workweek without interruptions from
20 psychologically based symptoms, performing at a consistent pace without an
21 unreasonable number of rest periods, accepting instructions and responding
22 appropriately to criticism from supervisors, and setting realistic goals or making
23 plans independently of others. Tr. 725-26. Dr. Valdez further explained that
24 Plaintiff was hypervigilant and felt emotionally numb at times, had difficulty with
25 sustained concentration and attention, and had the most difficulty with social
26 interactions, which caused him undue anxiety. Tr. 727. Dr. Valdez concluded that
27 due to his various symptoms, Plaintiff’s vocational prognosis was likely to remain
28 poor. *Id.*

1 The ALJ found this opinion unpersuasive, noting it was inconsistent with
2 medical evidence showing largely intact mental status exams and only a
3 conservative course of treatment. Tr. 24-25. The ALJ further found the opinion
4 was contradicted by Plaintiff's full-time work at the time the opinion was
5 completed, and found it to be inconsistent with the testimony of the medical expert
6 at the hearing, who specifically noted the lack of supportive evidence for the
7 marked limitations in the opinion. *Id.*

8 Plaintiff argues that ALJ erred in giving more weight to the non-examining
9 opinion of the medical expert, failed to acknowledge the context of Plaintiff's work
10 and repeated absences, ignored the abnormal mental status exam findings
11 documented throughout the record, and failed to acknowledge the circumstances
12 surrounding the level of care Plaintiff received. ECF No. 14 at 12-16. Defendant
13 argues the ALJ's discussion was supported by substantial evidence and that
14 Plaintiff's alternative interpretation of the record did not render the ALJ's
15 interpretation incorrect. ECF No. 16 at 18-20.

16 The Court finds the ALJ did not err. The revised rules require the ALJ to
17 consider the supportability and consistency of an opinion. The ALJ reasonably
18 found Dr. Valdez's records lacked support for the limitations assessed, noting the
19 minimal objective abnormalities and the lack of significant treatment for the
20 supposedly disabling impairments. Tr. 24-25. These were relevant factors for the
21 ALJ to consider in determining the supportability of the opinion. As noted by the
22 medical expert, the treatment records were limited, with nothing in them to
23 establish marked impairments. Tr. 48-49. The ALJ reasonably considered this
24 testimony in finding Dr. Valdez's opinion to be inconsistent with the other
25 evidence. Additionally, as discussed above, the ALJ reasonably considered
26 Plaintiff's full-time work as inconsistent with the disabling limitations. Plaintiff's
27 arguments regarding missed days and potential FMLA accommodations are not
28 supported by any evidence in the record. Therefore, the ALJ reasonably considered

Dr. Valdez's opinion to be inconsistent with Plaintiff's demonstrated abilities with respect to work. The ALJ's discussion is supported by substantial evidence.

VII. CONCLUSION

Having reviewed the record and the ALJ's findings, the Court finds the ALJ's decision is supported by substantial evidence and free of legal error and is affirmed. Therefore, **IT IS HEREBY ORDERED:**

1. Defendant's Motion for Summary Judgment, **ECF No. 16**, is **GRANTED**.

2. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.

The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant and the file shall be **CLOSED**.

DATED September 21, 2022.




JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE